The reasoning of *Servel* applies equally and with the same force to the facts in this case.

In *System Federation* the Fifth Circuit stated at page 515:

> "The only question with which we are here concerned is whether the seniority rights claimed, arise out, and exist, because of, the 1929 contract, and persist during and only during its term, or whether they indefinitely continue to exist after it has been abrogated, and the relations of employer and employee are no longer fixed and being carried on, under that contract, but for many years under rules, promulgated by the company, and later under a contract between the company and the union which affirms that it 'covers all understandings now in effect.' "

It was there decided by the Fifth Circuit at page 515:

> "On this point the authorities are uniform. They settle it that collective bargaining agreements do not create a permanent status, give an indefinite tenure, or extend rights created and arising under the contract, beyond its life, when it has been terminated in accordance with its provisions. Authorities, supra. The rights of the parties to work under the contract are fixed by the contract. They persist during, they end with, its term. After the termination of the 1929 contract, those who remained in the employ of the defendant, or came into it afterwards, held their tenure and such rights as they had, not under the 1929 contract, but at first under the company rules and later under the 1937 contract, and none of them can claim rights contrary thereto."

The reasoning of *System Federation* that rights of seniority apply *only* during the existence of the collective bargaining agreement out of which such rights might arise applies equally and with the same force to the facts in

this case. Upon the termination of that agreement in accordance with its provisions, seniority rights likewise were terminated and the termination of the relationship of employer and employee terminated any rights to seniority.

In *Elder* a series of collective bargaining agreements provided certain seniority rights in favor of employees including plaintiff. Plaintiff was laid off while his rights to seniority were still in effect, but during such layoff, the employer and the collective bargaining agent made a new agreement (in conjunction with a consolidation of certain offices of the employer) under which it was agreed that the employment of plaintiff and others was terminated. Plaintiff brought suit to recover wages of which he claimed he had been deprived by reason of his termination, on the ground that such termination was in violation of his seniority rights. The Sixth Circuit stated, at page 364:

> "The seniority right of the man who toils, indoors or out, in a shop or in an office, is a most valuable economic security, of which he may not be unlawfully deprived. The right, however, is not inherent. It must stem either from a statute or a lawful administrative regulation made pursuant thereto, or from a contract between employer and employee, or from a collective bargaining agreement between employees and their employer. In the absence of statute, mere employment independent of the contractual conferring of special benefits upon those who have longest service records with the individual employer, creates no rights of seniority in retention in service or in reemployment. In the instant case, the appellant rests upon no right created by statute, but solely upon a collective bargaining agreement, made between the chosen representative of the workers and the employer. The fact that he was not a member of the union labor organization which

> lawfully bargained for him and for all other employees of the company neither strengthens nor weakens his position. His individual seniority rights were both created and limited by the bargain which was made for and was binding upon all employees for whom it was made. * * * *
>
> "As was pointed out in *System Federation No. 59* * * * the authorities are uniform to the effect that collective bargaining agreements do not create a permanent status, give an indefinite tenure, or extend rights created and arising under the contract beyond its life, when it has been terminated in accordance with its provisions."

There again as pointed out with respect to *System Federation,* the reasoning was that seniority rights ceased upon the termination of the agreement out of which such rights might arise or upon the termination of the relationship of employer and employee.

The reasoning in each of these cases supports the contention made by petitioner that the decision of the Court of Appeals here is in conflict with the aforesaid decisions of the Fifth, Sixth and Seventh Circuit Courts of Appeal.

The conflict should be resolved by this Court.

II.

The importance of the questions.

At pages 7 to 12 of their brief in opposition, respondents say that no important question of federal law is involved.

That important questions of substantive federal law are involved which should be reviewed by this Court has been demonstrated in the petition.

The widespread importance of these questions has been suggested by the motions made and memoranda submitted

by various associations asking leave to appear as *amici curiae* on the petitioner's petition for a writ of certiorari, as follows:

American Spice Trade Association
California Manufacturers Association
Chamber of Commerce of the City of Cleveland, Ohio
Chamber of Commerce of the United States
Georgia State Chamber of Commerce
Illinois State Chamber of Commerce
Institute of Shortening and Edible Oils, Inc.
National Association of Margarine Manufacturers
National Paint, Varnish and Lacquer Association, Inc.
Ohio State Chamber of Commerce

Pennsylvania State Chamber of Commerce has filed its brief as *amicus curiae* on consent of petitioner and respondents.

The judges of the United States Court of Claims have filed their brief as *amici curiae* on consent of petitioner and respondents requesting this Court to grant the petition insofar as it seeks a review of the question as to whether participation by a Court of Claims judge vitiates the judgment of the Court of Appeals.

The widespread importance of these questions is also demonstrated by the editorial columns of Mr. Arthur Krock appearing in The New York Times for July 21, 1961 and August 18, 1961, entitled respectively "In The Nation—Jobs as 'Vested Rights' Despite Location Changes", (Vol. CX, No. 37,799, p. 22, col. 6) and "In The Nation—Issue of Judicial Power to Rewrite Labor Contracts," (Vol. CX, No. 37,827, p. 20, col. 3). A copy of Mr. Krock's article of August 18, 1961 is attached hereto for the convenience of the Court.

Reference is also made to articles appearing in the Wall Street Journal dated July 13, 1961 (Vol. CLVIII, No. 8, p. 2, cols. 2, 3 and 4) entitled "UAW Asks Voice In Ford Decisions on Factory Sites" and "Auto Union Studies More Suits to Ensure Worker Transfer Rights as Plants Move", and dated July 21, 1961 (Vol. CLVIII, No. 14, p. 1, col. 8) entitled "Glidden Co. Contests Union Claim to 'Vested' Rights to Plant Jobs".

From the foregoing it is clear that the questions sought by petitioner to be reviewed by this Court are of widespread importance.

For all the reasons urged this Court is requested to grant the petition for certiorari.

Dated: New York, N. Y.
September 6, 1961.

Respectfully Submitted,

CHESTER BORDEAU,
Attorney for Petitioner.

WHITE & CASE,
Of Counsel.

The New York Times, August 18, 1961
Vol. CX, No. 37,827,
page 20, Col. 3

In The Nation.[3]

Issue of Judicial Power to Rewrite Labor Contracts

By Arthur Krock

The many groups of this country whose interests have been fundamentally affected by a recent United States Court of Appeals ruling in *Zdanok* v. *the Glidden Company* have been slow to awaken to this reality. But the awakening has occurred as a consequence of studies of the decision that have since been circulated increasingly among industrialists, labor unions and communities seeking to accelerate local employment. Hence an unusually large, important and anxious audience now awaits the disposition the Supreme Court will make at its forthcoming term of the plea the Glidden Company has filed for review of the lower court's findings.

In effect, the Federal Court of Appeals in New York, reversing a United States district judge, held that certain employes acquire vested seniority rights to their jobs in perpetuity, even though (1) the contract of management with their union has expired; (2) their work has been terminated by the closing of the plant covered in the contract; and (3) the matter of such vested job rights was never a subject of the collective bargaining by which the contract was agreed to.

The issues raised in this decision include: the right of management to close or geographically transfer a plant in pursuance of its judgment that the health of the business requires the action; the right of employes who are not carried to the new location, or who decline to transfer there,

[3] Reprinted with permission of The New York Times Company, the publisher.

to collect damages from the company; the right of a company to execute a bilateral agreement with a community to move its plant there and recruit its employes locally in exchange for tax and other incentives; and the power of the Federal judiciary to rewrite management-labor contracts reached in collective bargaining.

The events which have entangled industry, unions, cities and more than 100,000 existing labor contracts in this legal jungle were these:

Case Background.

1. In 1957 the Glidden Company closed a food-processing plant at Elmhurst, N. Y., terminating employment there and established the operation at Bethlehem, Pa. The actions were consistent with the terms of the then existing contract between the company and the union. The move was in the interest of economy and efficiency, and was not motivated by lower tax offers, land gifts or other incentives from the city of Bethlehem.

2. The company gave long advance notice of its transfer intentions, attempted to sell the Elmhurst facilities to other food-processing companies, offered to consider all Elmhurst employes for transfer, signed up two who applied, and assisted others to find jobs.

3. Five Elmhurst plant employes sued the company for damages on the ground that implied in the contract (which had expired) was the acquirement of seniority rights to jobs; and that these rights, the product of extended contractual service, survived the expiration of the contract or any geographical change in the plant's location, or any change of union representation by employes at the point of relocation.

4. The Federal district court found for the company on its certification that it had never bargained with the union for transferable seniority rights, that nothing touch-

ing on the claim was in the Elmhurst contract and that, moreover, the contract had expired. On appeal this decision was reversed.

If the Supreme Court declines to review the issues, or, after reviewing them, sustains the Court of Appeals, free play will be given to the operation of factors involved that can impede economic growth, competitive enterprise, the system of collective bargaining and existing contracts made thereby, and create a state of industrial confusion.

Should the Supreme Court leave this situation standing, however, it can be corrected by Congress since the grounding of the appeals court decision appears to be in equity and the implications found in long service, not in the Constitution of the United States. This should commend the situation for study to the team of forty-eight House Republicans, led by Representative Curtis of Missouri. It has just compiled a program designed to produce industrial policies "whose application (with maximum employment) will harness the productive potential of the nation to the initiative of our people."